

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEREMY PLACE, individually, and on)
behalf of others similarly situated,)
)
Plaintiff,)
)
v.)
)
RUSSELL TECHNOLOGIES, INC., d/b/a)
COMPUTER ST. LOUIS, SETH RUSSELL and)
NICOLE RUSSELL,)
)
Defendants.)

Case No.: 4:17-CV-00399-RWS

DEFENDANTS' MOTION FOR PARTIAL DISMISSAL

COME NOW, Defendants Russell Technologies, Inc., Seth Russell, and Nicole Russell, by and through counsel, and move to dismiss Counts I and II of Plaintiff Jeremy Place's Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Rules 8(a)(2) and 12(b)(6) of the Federal Rules of Civil Procedure. In support of their Motion, Defendants state as follows:

1. Plaintiff Jeremy Place, individually and on behalf of others similarly situated ("Plaintiffs"), purport to bring claims under the Fair Labor Standards Act (FLSA) and Missouri's Minimum Wage Law (MMWL) against Defendants, Russell Technologies, Inc., Seth Russell, and Nicole Russell ("Defendants").

2. Plaintiffs' Amended Complaint is legally deficient and must be dismissed pursuant to Rule 12(b)(6) because Plaintiffs have failed to sufficiently plead there purported overtime claims against Defendants under the FLSA and MMWL.

3. To survive a 12(b)(6) motion to dismiss, an FLSA overtime claim must state a plausible claim that a plaintiff worked compensable overtime in a workweek longer than 40 hours. *See Lundy v. Catholic Health Sys. of Long Island Inc.*, 711 F.3d 106, 114 (2d Cir. 2013) (dismissing FLSA complaint that failed to allege “a single workweek in which [the plaintiffs] worked at least 40 hours and also worked uncompensated time in excess of 40 hours”).

4. Plaintiffs’ Amended Complaint does not identify and plead facts supporting at least one specific workweek in which one or any Plaintiff worked over forty (40) hours and did not receive overtime for the time they worked over forty (40) hours.

5. Accordingly, Counts I and II Plaintiff’s Amended Complaint does not meet the plausibility standards required by the Federal Rules of Civil Procedure and must be dismissed pursuant to Rules 8(a)(2) and 12(b)(6) for failure to state a claim upon which relief can be granted.

6. Defendants hereby incorporate by reference their Memorandum in Support of their Motion for Partial Dismissal.

WHEREFORE, Defendants respectfully request that Counts I and II of Plaintiff’s Amended Complaint be dismissed as to all Defendants, and for such other further or additional relief the Court deems just and proper.

BROWN & JAMES, P.C.

/s/ Steven H. Schwartz
Steven H. Schwartz, #36436MO
sschwartz@bjpc.com
James M. Bertucci, #67263MO
jbertucci@bjpc.com
800 Market Street, 11th floor
St. Louis, Missouri 63101
314.421.3400
Fax: 314.421.3128

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2017, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Russell C. Riggan
Samuel W. Moore
Riggan Law Firm, LLC
132 W. Washington Ave. - Suite 100
Kirkwood, MO 63122
russ@rigganlawfirm.com
smoore@rigganlawfirm.com

**Attorneys for Plaintiff
and all others similarly situated**

/s/ Steven H. Schwartz